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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1920

No. 235

BARTHOLOMEW SULLIVAN, MARGARET THOLEN, JOHN
MANTIN, ET AL., APPELLANTS,

JANE KIDD.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF KANSAS.

FILED SEPTEMBER 12, 1921.

(26,500)

RECORDS OF THE

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(26,888)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1918.

No. 802.

BARTHOLOMEW SULLIVAN, MARGARET THOLEN, JOHN
MARTIN, ET AL., APPELLANTS,

vs.

JANE KIDD.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF KANSAS.

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1 In the District Court of the United States, District of Kansas,
First Division.

In Equity.

No. 190-N.

BARTHOLOMEW SULLIVAN and MARGARET THOLEN, Complainants,

vs.

JOHN MARTIN, JOSEPH MARTIN, ANNA MARTIN, NOW KNOWN as
Sister Mary Jerome; Jane Kidd, Sole Devisee and Legatee under
and by Virtue of the Last Will and Testament of Margaret
Ingoldsbey, Deceased; Joseph Hall, James Hall, Ellen Hall, Mary
Hall, William Hall, Gertrude Hall, Winnifred Hall, Thomas
Hall, Bernard J. Martin, Edward F. Martin, Thomas C. Martin,
Patrick H. Martin, Leo R. Martin, J. Vincent Martin, Michael H.
Martin, Rachel I. Martin, Mary A. Standart, Anne F. Martin,
Julia F. Martin, Julia Martin, Guardian of Michael H. Martin and
Julia F. Martin, Minors; Joseph Martin, Administrator of the
Estate of John Martin, and John Martin, the Son of Joseph
Martin, Defendants.

Citation on Appeal.

THE UNITED STATES OF AMERICA, ss:

To Jane Kidd, Greeting:

You are hereby cited and admonished to be and appear at the
Supreme Court of the United States, to be held at the City of Wash-
ington, in the District of Columbia, thirty days from and after this
citation bears date, pursuant to an order allowing an appeal filed and
entered in the office of the Clerk of the District Court of the United
States, District of Kansas, First Division, from a judgment, decree,
holding, signed, filed and entered, on the 19th day of June, 1918, in
that certain suit, being in Equity No. 190-N, wherein Bartholomew

2 Sullivan and Margaret Tholen are complainants and you are
one of the defendants and appellee, to show cause, if any
there be, why the decree rendered against the said appellants,
as is said order, allowing appeal mentioned, should not be corrected
and why justice should not be done to the parties, appellant, in
that behalf.

Witness, the Honorable United States Judge, for the District of
Kansas, this 17th day of September, A. D. 1918.

JOHN C. POLLOCK,

United States Judge for the District of Kansas.

Service of the above Citation is hereby received this 17th day of September, A. D. 1918.

**WARNER, DEAN, McLEOD &
LANGWORTHY,**
Solicitors for Appellee Jane Kidd.

[Endorsed:] No. 190-N. U. S. District Court, District of Kansas. Sullivan et al. vs. Martin et al. Citation on Appeal. Filed Sep. 17, 1918. F. L. Campbell, Clerk, by D. B. White, Deputy.

3 In the District Court of the United States, District of Kansas,
First Division.

In Equity.

No. 190-N.

BARTHOLOMEW SULLIVAN and MARGARET THOLEN, Complainants,
vs.

JOHN MARTIN, JOSEPH MARTIN, ANNA MARTIN, Now Known as Sister Mary Jerome; Jane Kidd, Sole Devisee and Legatee under and by Virtue of the Last Will and Testament of Margaret Ingoldsby, Deceased; Joseph Hall, James Hall, Ellen Hall, Mary Hall, Thomas Hall, Gertrude Hall, Winnifred Hall, William Hall, Bernard J. Martin, Edward F. Martin, Thomas C. Martin, Patrick H. Martin, J. Vincent Martin, Leo R. Martin Michael H. Martin, Rachel I. Martin, Mary A. Standard, Anne F. Martin, Julia F. Martin, Julia Martin, Guardian of the Person and Estate of Michael H. Martin and Julia F. Martin, Minors, and John Martin, the Son of Joseph Martin, and Joseph Martin, Administrator of the Estate of Peter Martin, Deceased, Defendants.

Bill of Complaint.

The complainants above named, Bartholomew Sullivan and Margaret Tholen, say: That they are, respectively citizens and residents of Santa Clara, California, and Overland, Missouri, and that such places are their post office addresses.

That the matter in dispute in this suit exceeds the sum or value of three thousand (\$3,000.00) Dollars, exclusive of interest and costs.

That the determination of this controversy depends, materially, upon the construction to be placed upon the existing treaties between the United States of America and the Kingdom of Great Britain and Ireland which affect the tenure and disposition of real property among the citizens and subjects of said signatory powers.

That heretofore and on or about the 29th day of January, 1915, one Peter Martin, a widower and unmarried, died at Osawatimie, Kansas, intestate and without issue, that at the time of his death and prior thereto, the said decedent was a citizen and resident of

4 the county of Saline, owning real property therein described as follows:

The North half of the Northeast Quarter of Section Twenty Two; also the South half of the Southeast Quarter of Section Fifteen; also the Southeast Quarter of the Southwest Quarter of Section Fifteen; also the Southeast Quarter of Section Eighteen; all lying and situate in Township Fourteen South, Range One, West of the Sixth Principal Meridian.

That prior to the death of said Peter Martin, and by the consideration of the Probate Court of Saline County, Kansas, he the said Peter Martin, was duly adjudged insane and that on or about the — day of —, 190—, the above named Joseph Martin, was appointed Guardian of his person and estate, qualifying and acting as such up and until the death of said ward, that pursuant to such the said Joseph Martin took possession of all real and personal property belonging to his said ward and during said time, the exact date thereof being unknown to your complainants, occupied the Southeast Quarter of Section Eighteen of said real estate and rented the remaining parcels of said real estate to his son, the said John Martin, who are at this time in possession thereof as tenants at will of the owners of said real estate.

That the said Peter Martin, left surviving him the following named brothers and sisters, nephews and nieces:

The said defendant, John Martin, a brother, Solomon, Kansas. The said Defendant, Joseph Martin, a brother, Solomon, Kansas. The said defendant, Anna Martin, now known as Sister Mary Jerome, Leavenworth, Kansas. The said Margaret Ingoldsby, a sister, Township of Sheffield, County of Lennox-Addington, Province of Ontario, Dominion of Canada.

Joseph Hall, James Hall and Ellen Hall, Salina, Kansas, Mary Hall, Thomas Hall, Gertrude Hall, Winifred Hall and William Hall, Kansas City, Missouri; the sons and daughters of Bridget Hall, a deceased sister.

Bernard J. Martin, Edward F. Martin, Thomas C. Martin, J. Vincent Martin, Leo R. Martin, Michael F. Martin, Rachel I. Martin and Julia F. Martin, Salina, Kansas, Patrick H. Martin, Denver, Colorado, Anne F. Martin, Kansas City, Missouri, and Mary A. Standard, née Martin, the sons and daughters of Thomas Martin, a deceased brother and

The said complainants; the son and daughter of Rachel Sullivan, née Martin, a deceased sister,

5 all of whom have attained their majority except the said Michael H. Martin and Julia F. Martin, minors, as aforesaid, and that the said Julia Martin, by the consideration of the Probate Court of Saline County, Kansas, is the duly appointed, qualified and acting Guardian of their estate.

That subsequent to the death of the said Peter Martin and on or about the 28th day of July, 1916, the said Margaret Ingoldsby died, at her home in the Township of Sheffield, county of Lennox-Addington, Province of Ontario, Dominion of Canada, testate, that in her

last will and testament which was duly probated in His Majesty's Surrogate Court, in and for said county and Province, she the said Margaret Ingoldsbey, named as her sole devisee and legatee the said defendant Jane Kidd.

That the said Margaret Ingoldsbey was, at the time of the death of the said Peter Martin, and at the time of her decease a subject of His Britannic Majesty and residence of said Township of Sheffield and a non-resident alien of the United States of America and State of Kansas, by virtue whereof the right of inheritance of the said Margaret Ingoldsbey and her said legatee and devisee, in and to said real estate, are determined by the treaty, now in force, between the Governments of the United States of America and the Kingdom of Great Britain and Ireland, and promulgated August 6, 1900.

That subsequent to the death of the said Peter Martin, the above named Joseph Martin, was, by the consideration of the Probate Court of Saline County, Kansas, appointed Administrator of the estate of said decedent and thereafter duly qualified and is now, and ever since has been, acting as such, that the only interest Joseph Martin, as such administrator, has in said real estate, is: that he, as such administrator, holds said real estate for the payment of the debts of said estate insofar as the personal property thereof is insufficient to pay the same; but complainants aver that all of the debts of the said intestate have been duly paid and that in fact said administrator has no interest in said real estate.

That said real estate is wholly unencumbered of and from any and all liens and mortgage indebtedness.

That under and by virtue of the laws of the State of Kansas, complainants are the owners, in fee simple, of an undivided one (1/6) sixth of said real estate and that said surviving brothers and sisters, and surviving sons and daughters of said deceased brother and sisters, are entitled to the remaining five (5/6) sixths thereof, subject, however, to the right of inheritance in said real property of the said Margaret Ingoldsbey, and her said devisee and legatee to an undivided share or interest therein, such right of inheritance to be determined under and by virtue of the provisions of said treaty, and in the event that it is determined that the said Margaret Ingoldsbey or Jane Kidd are entitled to inherit a share or interest in said real property, then and in that event, said complainants are the owners of an undivided one (1/7) seventh of and in said real property.

That complainants are entitled to a partition of said real estate among the owners thereof, defendants herein, tenants in common, as heretofore alleged so that they may have their share thereof in severalty and that if said real estate can not be divided in kind, then and in that event their share of the proceeds derived from a judicial sale thereof if the said real estate can not be partitioned.

The premises considered, complainants pray: that said defendants, and each of them, be required to answer, herein, therein setting up their claims to their respective interests in said real estate; that upon final hearing it be decreed by the Court that said real estate be partitioned among the heirs at law of the said Peter Martin, deceased, accordingly as their respective interests may appear therein; that in

the event said real estate can not be divided according to such interests that the same be sold and the proceeds derived from the sale thereof be divided as may be consistent with said rights and the principles of equity; and that it be, further decreed, whether or not the defendant, Jane Kidd, devisee as aforesaid, a non-resident alien, have any interest in said real estate, and if so, to what extent and for such other and further relief as to the Court may seem equitable.

GEO. F. BEATTY,
Solicitor for Complainants.

UNITED STATES OF AMERICA,
State and District of Kansas,
County of Saline, ss:

Geo. F. Beatty of lawful age and first duly sworn, on his oath says: that he is solicitor for the complainants, above named; that said complainants are non-residents of the State and District of Kansas, and without the jurisdiction of this court, that said complainants are, respectively, residents of the States of California and Missouri; that he has read the foregoing Bill of Complaint, and knows the contents thereof; that said Bill and the allegations therein contained are true except such allegations as are made upon information and belief and as to such he believes them to be true, so help me God.

GEO. F. BEATTY.

Subscribed in my presence and duly sworn to before me, this 12th day of March, 1917.

[SEAL.]

C. W. LYNN,
Notary Public.

My Commission Expires January 30th, 1921.

Filed in the District Court on March 12, 1917.

Waiver of Service and Entry of Appearance.

We, the above named defendants, whose names are hereunder written, hereby acknowledge receipt of a copy of the Bill of Complaint filed herein, in the Office of the Clerk of the above named Court on the 12th day of March, 1917; and hereby waive service of subpoena and copy of said Bill of Complaint upon us and either of us by the Marshal of said Court and enter our appearance herein.

JOHN MARTIN,
MARY A. STANDARD,
ANNA F. MARTIN,
JOSEPH HALL,
JAMES HALL,
ELLEN HALL,
WILLIAM HALL,
THOMAS HALL,
GERTRUDE HALL,
WINNIFRED HALL,
MARY HALL,
EDWARD F. MARTIN,
BERNARD J. MARTIN,
THOMAS C. MARTIN,
LEO R. MARTIN,
J. VINCENT MARTIN,
RACHEL I. MARTIN,
JULIA MARTIN,

*Guardian of the Persons and Estate of Michael
H. Martin and Julia F. Martin, Minors.*

Filed in the District Court on April 23rd, 1917.

*Waiver of Service of Subpoena and Entry of Appearance of
Jane Kidd.*

I, the undersigned solicitor for Jane Kidd, defendant, above named, hereby enter the appearance of said defendant in said cause, acknowledge receipt of copy of Bill of Complaint filed herein on the 12th day of March, 1917, waive the issuance and service of process upon said defendant and enter my appearance as Solicitor for the said defendant.

H. C. TOBEY,
Solicitor for Defendant.

Salina, Kansas, Apr. 21, 1917.

Filed in the District Court on April 23, 1917.

Waiver of Service and Entry of Appearance.

We, the undersigned solicitors for Joseph Martin, Joseph Martin, Administrator of the estate of Peter Martin, deceased, Patrick H.

Martin, John Martin son of Joseph Martin and Anna Martin now known as Sister Mary Jerome, defendants above named, hereby enter the appearance of said defendants, in said cause, acknowledge receipt of a copy of the Bill of Complaint filed herein on the 12th day of March, 1917, waive the continuance and service of process upon said defendants and enter our appearance herein as Solicitors for them and each of them.

BURCH, LITOWICH AND ROYCE,

Solicitors for said Defendants,

By C. W. BURCH, *Member of said Firm.*

Filed in the District Court on April 23, 1917.

*Preceipe for Chancery Subpoena for Michael H. Martin and
Julia F. Martin.*

To Morton Albaugh, Esq., Clerk of said court:

You will please issue subpoenas to the above named defendants, Michael H. Martin and Julia F. Martin directed to the Marshal of said court and returnable according to law.

Salina, Kansas, April 21, 1917.

GEO. F. BEATTY,

Solicitor for Complainant.

Filed in the District Court on April 23, 1917.

Chancery Subpoena.

UNITED STATES OF AMERICA,

District of Kansas, ss:

The United States of America to Michael H. Martin and Julia F. Martin, Greeting:

This is to command you and every of you, that you appear before the Judge of the District Court of the United States of America for the District of Kansas, at the City of Topeka, in said District, to answer the Bill of Complaint of Bartholomew Sullivan and Margaret

Tholen this day filed in the Clerk's office of said Court in said City of Topeka, to receive and abide by such judgment and decree as shall then or thereafter be made upon pain of judgment being pronounced against you by default.

To the Marshal of the District of Kansas to execute.

Witness, the Hon. John C. Pollock, Judge of the District Court of the United States of America for the District of Kansas, at the City of Topeka in said District, this 23rd day of April, in the year of our Lord one thousand nine hundred and seventeen.

[SEAL.]

MORTON ALBAUGH, *Clerk,*

By F. L. CAMPBELL,

Deputy Clerk.

Memorandum.

The above-named defendants are notified that unless they file their answer or other defense in the Clerk's office of said Court, at the City of Topeka, aforesaid, on or before the twentieth day after service of the above writ (excluding the day of service), the Bill of Complaint may be taken pro confesso and a decree entered accordingly.

MORTON ALBAUGH, *Clerk*,

By F. F. COMPELL, *Deputy Clerk*.

U. S. Marshal's Return.

DISTRICT OF KANSAS, ss:

Received the within writ — Topeka, April 28, 1917, and executed the same as follows to-wit: Served on the within named Michael H. Martin, by leaving a true and certified copy of this writ with all endorsements thereon at his usual place of residence and abode with an adult member of the family, at Salina, Kansas, April 28, 1917.

11 Served on the within named Julia F. Martin, personally a true and certified copy of this writ with all endorsements thereon at Salina, Kansas, April 28, 1917.

O. T. WOOD,

U. S. Marshal,

By J. M. MYERS, *Deputy*.

Fees \$15.21.

At the same time and place and in like manner I served a copy of the Bill of Complaint filed in this case on the above named person.

O. T. WOOD,

U. S. Marshal,

By J. M. MYERS, *Deputy*.

Filed in the District Court on May 1, 1917.

Amended Bill of Complaint.

The complainants, above named, Bartholomew Sullivan and Margaret Tholen, say: that they are respectively citizens and residents of Santa Clara, California, and Overland, Missouri.

That the matter in dispute in this suit exceeds the sum or value of three thousand (\$3,000.00) Dollars, exclusive of interest and costs.

That the determination of this controversy depends, materially, upon the construction to be placed upon the existing treaties between the United States of America and the Kingdom of Great Britain and Ireland which affect the tenure and disposition of real property among the citizens and subjects of said signatory powers.

That heretofore and on or about the 29th day of January, 1915, one Peter Martin, a widower and unmarried, died at Osawatomie,

Kansas, intestate and without issue, that at the time of his death, and prior thereto, the said decedent was a citizen and resident of the county of Saline, owning real property therein, described as follows:

12 The North half of the Northeast Quarter of Section Twenty Two; also the South half of the Southeast Quarter of Section Fifteen; also the Southeast Quarter of the Southwest Quarter of Section Fifteen; also the Southeast Quarter of Section Eighteen; all lying and situate in Township Fourteen South, Range One, West of the Sixth Principal Meridian.

That prior to the death of said Peter Martin, and by the consideration of the Probate Court of Salina County, Kansas, he the said Peter Martin, was duly adjudged insane and that on or about the — day of —, 190—, the above named Joseph Martin, was appointed guardian of his person and estate, qualified and acting as such up and until the death of said ward, that pursuant to such the said Joseph Martin took possession of all real and personal property belonging to his said ward and during said time, the exact date thereof being unknown to your complainants, occupied the Southeast Quarter of Section Eighteen of said real estate and rented the remaining parcels of said real estate to his son, the said John Martin, who are at this time in possession thereof as tenants at will of the owners of said real estate.

That the said Peter Martin, left surviving him the following named brothers and sisters, nephews and nieces:

The said defendant, John Martin, a brother, Solomon, Kansas. The said defendant, Joseph Martin, a brother, Solomon, Kansas. The said defendant, Anna Martin, now known as Sister Mary Jerome, Leavenworth, Kansas. The said Margaret Ingoldsbly, a sister, Township of Sheffield, County of Lennox-Addington, Province of Ontario, Dominion of Canada.

Joseph Hall, James Hall and Ellen Hall, Salina, Kansas, Mary Hall, Thomas Hall, Gertrude Hall, Winnifred Hall and William Hall, Kansas City, Missouri; the sons and daughters of Bridget Hall, a deceased sister.

Bernard J. Martin, Edward F. Martin, Thomas C. Martin, J. Vincent Martin, Leo R. Martin, Michael H. Martin, Rachel I. Martin and Julia F. Martin, Salina, Kansas, Patrick H. Martin, Denver, Colorado, Anne F. Martin, Kansas City, Missouri, and Mary A. Standard, née Martin, the sons and daughters of Thomas Martin, a deceased brother and

The said complainants; the son and daughter of Rachel Sullivan, née Martin, a deceased sister.

all of whom have attained their majority except the said
13 Michael H. Martin and Julia F. Martin, minors, as aforesaid, and that the said Julia Martin, by the consideration of the Probate Court of Salina County, Kansas, is the duly appointed, qualified and acting Guardian of the estate of said minors.

That subsequent to the death of the said Peter Martin and on or about the 28th day of July, 1916, the said Margaret Ingoldsbly died

at her home in the township of Sheffield, county of Lennox-Addington, Province of Ontario, Dominion of Canada, and that at the time of her death she, the said Margaret Ingoldsby, was a citizen and resident of said township, county, province and dominion, and a non-resident alien of the United States of America and State of Kansas, that in her Last Will and Testament which was duly filed and probated in his Majesty's Surrogate Court sitting in and for said county and Province, the said defendant, Jane Kidd was duly named as sole legatee and devisee, a copy of said last will and testament being hereto annexed, marked Exhibit A and made part of this amended Bill of Complaint, by virtue whereof the right of inheritance of the said Margaret Ingoldsby and her said legatee and devisee are determined by the conventions of 1899 and 1902, entered into by and between the Governments of His Britannic Majesty and the United States of America and affecting the tenure and disposition of real and personal property between the citizens and subjects of said signatory powers.

That subsequent to the death of the said Peter Martin, the above named Joseph Martin, was, by the consideration of the Probate Court of Salina County, Kansas, appointed Administrator of the estate of said decedent and thereafter duly qualified as such and is now and always has been acting in such capacity, that the only interest said Joseph Martin has in said property as said administrator, is that he holds said real estate for the payment of the debts of said estate insofar as the personal property of the estate of said decedent is insufficient to pay the same; but complainants aver that all of the debts of said estate have been paid and that in fact said administrator has no interest in said real estate.

That the said real estate is wholly unencumbered of and from all liens and mortgage indebtedness.

That under and by virtue of the laws of the State of Kansas, complainants herein are the owners in fee simple of an undivided one sixth of the real estate hereinbefore described, and that the said defendants, other than the said Jane Kidd as sole legatee and devisee of the said Margaret Ingoldsby, deceased, Joseph Martin, as administrator of the estate of the said Peter Martin, deceased, and John Martin the son of Joseph Martin, are the owners, in fee simple, of the remaining five-sixths of said real estate.

That complainants herein, are entitled to a partition of said real estate among the owners thereof, tenants in common defendants herein, other than the said Joseph Martin, Administrator, John Martin the son of Joseph Martin, and the said Jane Kidd, the sole legatee and devisee under the last will and testament of the said Margaret Ingoldsby, Deceased, as heretofore alleged, so that they may have their share in severalty in said real estate, and that if said property can not be divided in kind, then and in that event that their share of the proceeds derived from a judicial sale thereof if said property can not be partitioned in kind.

The premises considered complainants pray that the said defendants and each of them be required to answer herein, therein setting up their right, title, estate and interest in, to and upon said real estate or any part thereof, and that upon final hearing by the Court it be decreed that said real estate be partitioned among the owners thereof

the heirs of the said Peter Martin, deceased, accordingly as their respective interests may appear therein; that the Court decree that the complainants herein, are the owners in fee simple of an undivided one sixth of said real estate; that said real estate be sold and

15 that the proceeds derived from the judicial sale thereof be divided as may be consistent with said rights and the principles of equity and that it be further decreed that the said Jane Kidd, Joseph Martin, Administrator and John Martin the son of Joseph Martin, have no right, title, claim estate or interest in, to or upon said real estate or any part thereof of any kind or character whatsoever, and for such other and further relief as to the Court may seem equitable and just including judgment for costs.

GEO. F. BEATTY,
Solicitor for Complainants.

Salina, Kansas, July 23, 1917.

UNITED STATES OF AMERICA,

*State and District of Kansas,
County of Saline, ss:*

Bartholomew Sullivan of lawful age and first duly sworn on his oath, says, that he is one of the complainants, above named; that he has read the above and foregoing Amended Bill of Complaint, and knows the contents thereof, that said Amended Bill of Complaint and the allegations therein contained except such allegations as are made upon information and belief are true and as to such allegations as are made upon information and belief he believes them to be true, So help him God.

BARTHOLOMEW SULLIVAN.

Subscribed in my presence and duly sworn to before me this 21st day of July, 1917.

[SEAL.]

RALPH ANDERSON,
Notary Public.

My Commission expires Feb. 10, 1921.

Filed in the District Court on July 25th, 1917.

16 *Acceptance of Service of Amended Bill of Complaint.*

I, the undersigned solicitor for the above named John Martin, Joseph Hall, James Hall, Ellen Hall, Mary Hall, Thomas Hall, Gertrude Hall, Winnifred Hall, William Hall, Bernard J. Martin, Edward F. Martin, Thomas C. Martin, Rachel I. Martin, Mary A. Standard, Anne F. Martin, J. Vincent Martin, Leo R. Martin, Michael H. Martin, Julia F. Martin and Julia Martin, Guardian of the person and estate of Michael H. Martin and Julia F. Martin, Minors, being duly authorized to so do hereby accept service on behalf of the said defendants of a copy of the amended bill of complaint this 25th day of July, 1917.

GEO. F. BEATTY.

Filed in the District Court on July 25th, 1917.

Acceptance of Service of Amended Bill of Complaint.

We, the undersigned Solicitors for the above named defendants, Joseph Martin, Anna Martin now known as Sister Mary Jerome, Patrick H. Martin, Joseph Martin as administrator of the estate of Peter Martin deceased and John Martin the son of Joseph Martin, hereby accept service of the amended bill of complaint by copy thereof this 25th day of July, 1917.

BURCH, LITOWICH & ROYCE,
By C. W. BURCH,
Member of said Firm.

Filed in the District Court on July 25, 1917.

17 *Motion for Service on Absent Defendant.*

Come now the complainants above named and show to the Court that the above named defendant, Jane Kidd, is not an inhabitant of the State of Kansas and is without the confines thereof and can not be served personally with a subpoena within said State and District; that said defendant is an inhabitant of the township of Sheffield, County of Lennox and Addington, Province of Ontario, Dominion of Canada. Wherefore, complainants move this Honorable Court that an order may be made and entered in this proceeding therein directing that service of copy thereof together with a certified copy of the amended Bill of Complaint be made upon the said defendant by some suitable person and that therein the said defendant be directed to answer, demur or otherwise plead to said amended Bill of Complaint heretofore filed herein, on or before such date as to the Court may seem just and proper.

BARTHOLOMEW SULLIVAN,
MARGARET THOLEN,
By GEO. F. BEATTY,
Their Solicitor.

Filed in the District Court July 26, 1917.

18 *Order for Service on Absent Defendant.*

It appearing that this is an action for the partition of real estate situate within the county of Saline and State and District of Kansas, and to establish claims upon and title thereto, and that Jane Kidd, one of said defendants is not an inhabitant of the State of Kansas and is an inhabitant of the township of Sheffield, County of Lennox-Addington, Province of Ontario, Dominion of Canada and that personal service of subpoena can not be had upon said defendant within said District of Kansas, it is

Ordered, that said defendant, Jane Kidd within 20 days from the date of service upon her of a copy of this order together with a copy of the amended bill of complaint; appear and answer, demur or otherwise plead to said Bill.

Witness my hand and the seal of said Court, this 27th day of July, 1917.

ARBA S. VAN VALKENBURGH,
Judge Assigned.

Filed in the District Court July 27, 1917.

19 *Return of Service.*

On this 7th day of August, 1917, before me, the undersigned a Commissioner to administer oaths in and for the county of Lennox-Addington, Province of Ontario, Dominion of Canada, came Jacob Dollar Bell to me personally known to be the identical person whose name is hereinafter subscribed and who is Sheriff's Special Officer of said county, and makes oath and says that he did, on the 6th day of August, A. D. 1917, personally serve Jane Kidd with a certified copy of the order and certified copy of the amended bill of Complaint which are hereto annexed by delivering to her, the said Jane Kidd, at her home in the township of Sheffield, county of Lennox-Addington, in said Province and Dominion, a true and certified copy of said order and said amended Bill, and I further make oath and say that I am not interested in this suit.

J. D. BELL.

Subscribed in my presence and duly sworn to before me, this 7th day of August, A. D. 1917.

[SEAL.]

W. A. GRANGE,

Notary Public in and for the Province of Ontario.

My commission for life.

Fees \$6.16.

Filed in the District Court August 13, 1917.

20 *Answer of Anna Martin, Now Known as Sister Mary Jerome.*

Comes now the above named defendant, Anna Martin, now known as Sister Mary Jerome, and for answer to complainants' bill of complaint filed in said cause, admits the facts and allegations therein set forth and contained.

This answering defendant further alleges that she inherited an undivided one-sixth (1/6) of the real estate described in plaintiffs' bill of complaint as a sister and heir at law of Peter Martin, deceased; and this defendant *is* now the owner in fee simple of and is entitled to the possession of an undivided one-sixth (1/6) of said real estate.

This answering defendant further states that said real estate cannot be partitioned among the several owners thereof without manifest injury, and the best interests of each of the parties to said cause require that said real estate be duly advertised and sold in the manner provided by law.

Wherefore, this answering defendant prays that she be adjudged

to be the owner in fee simple of an undivided one-sixth (1/6) of said real estate; that partition of said real estate be made in the manner provided by law; and that upon the distribution of the proceeds of the sale of said real estate, this defendant have an undivided one-sixth (1/6) thereof; and that she have judgment for her costs in this behalf expended.

BURCH, LITOWICH & ROYCE,

*Attorneys for Anna Martin, Now
Known as Sister Mary Jerome.*

Filed in the District Court October 8, 1917.

21 *Answer of Joseph Martin, Administrator of the Estate of
Peter Martin, Deceased.*

Comes now Joseph Martin, administrator of the estate of Peter Martin, deceased, one of the defendants in the above entitled cause, and for answer to complainants' bill of complaint, alleges that on or about the — day of February, 1915, he was, by the consideration of the Probate Court of Saline County, Kansas, duly appointed as administrator of the estate of Peter Martin, deceased, and thereafter duly qualified as such, and is now the duly appointed, qualified and acting administrator of the estate of Peter Martin, deceased. That all claims which have been presented to said Probate Court for allowance have been adjudicated and determined, and have been fully paid, and this answering defendant has a small balance on his hands ample in amount to pay the costs of administration.

Wherefore, this answering defendant disclaims any interest in said real estate at this time, and prays judgment for his costs in this behalf expended.

BURCH, LITOWICH & ROYCE,

*Attorneys for Joseph Martin, Administrator
of the Estate of Peter Martin, Deceased.*

Filed in the District Court October 8, 1917.

22 *Answer of John Martin, Jr.*

Comes now the above named defendant, John Martin, Jr., the son of Joseph Martin, a defendant in the above entitled cause, and for answer to complainant's bill of complaint filed in said cause, alleges that he is in possession of the real estate described in complainants' bill of complaint as a tenant thereof; that by agreement of the owners of said real estate he has prepared — acres of said real estate and has sown the same to fall wheat in the fall of 1917, at great expense to him. By the terms of said agreement, as tenant, this answering defendant is to harvest said wheat and deliver to the owners of said real estate an undivided one-third (1/3) of said wheat at the threshing machine.

Wherefore, this answering defendant prays that if partition of said real estate be made, that in said order of partition the said

rights of this defendant be preserved to him, and if said real estate is sold by virtue of these proceedings, that the same be sold subject to his said rights as tenant.

Defendant further prays for his costs in this behalf expended.

BURCH, LITOWICH & ROYCE,

Attorneys for John Martin, Jr.

Filed in the District Court on October 8, 1917.

23

Answer of Joseph Martin.

Comes now the above named defendant, Joseph Martin, and for answer to complainants' bill of complaint filed in said cause admits the facts and allegations therein set forth and contained.

This answering defendant further alleges that he inherited an undivided one-sixth ($1/6$) of the real estate described in plaintiffs' bill of complaint as a brother and heir at law of Peter Martin, deceased. That he has purchased the interest of Patrick Martin in said real estate, as set forth in plaintiffs' bill of complaint, to wit: an undivided one-sixty-sixth ($1/66$) of said real estate; and this defendant is now the owner of in fee simple and is entitled to the possession of an undivided twelve sixty-sixths ($12/66$) of said real estate.

This answering defendant further states that said real estate cannot be partitioned among the several owners thereof without manifest injury, and the best interests of each of the parties to said cause require that said real estate be duly advertised and sold in the same manner provided by law.

Wherefore, this answering defendant prays that he be adjudged to be the owner in fee simple of an undivided twelve sixty-sixths ($12/66$) of said real estate; that partition of said real estate be made in the manner provided by law; and that upon the distribution of the proceeds of the sale of said real estate, this defendant have an undivided twelve sixty-sixths ($12/66$) thereof; and that he have judgment for his costs in this behalf expended.

BURCH, LITOWICH & ROYCE,

Attorneys for Joseph Martin.

Filed in the District Court on October 8th, 1917.

24

Answer of Patrick Martin.

Comes now the above named defendant, Patrick Martin, and for answer to complainants' bill of complaint filed in the above entitled cause, admits the facts and allegations therein set forth, and alleges that he inherited from his deceased uncle, the said Peter Martin, an undivided one-sixty-sixth ($1/66$) of the real estate described in complainants' said bill of complaint, and thereby became the owner thereof, and was entitled to the possession thereof. That since the death of the said Peter Martin this answering defendant has sold and conveyed all of his right and title to and interest in said real

estate to his co-defendant herein, Joseph Martin, who is now the owner and holder thereof, and entitled to the immediate possession thereof.

Wherefore, this answering defendant disclaims any interest in said real estate, and prays judgment for his costs in this behalf expended.

BURCH, LITOWICH & ROYCE,
Attorneys for Patrick Martin.

Filed in the District Court on October 8th, 1917.

Application for Appointment of Guardian Ad Litem.

Comes now Julia Martin, Guardian of the person and estate of the above named minors and shows to the Court that said minors are respectively niece and nephew of Peter Martin, deceased, who died, intestate, unmarried and without issue, owning real estate described in the amended Bill of Complaint, heretofore filed herein, in which said minors have an undivided estate of inheritance, in fee simple, in said real estate; that said minors have heretofore been duly served with process in this proceeding and are necessary parties to
25 this suit; that the said Julia Martin is of the age of eighteen years; that the said Michael H. Martin is of the age of twenty years and are therefore incompetent to defend their interests in said suit, and therefore said Guardian moves that a Guardian Ad Litem be appointed by this court to defend the rights of said minors in said litigation.

Salina, Kansas, October 10, 1917.

GEO. F. BEATTY,
Attorney for said Guardian.

Filed in the District Court on October 11th, 1917.

Order Appointing Guardian Ad Litem.

It appearing to the Court that the above named Julia F. Martin and Michael H. Martin, minor defendants have been duly served with process in this suit, and that said Julia F. Martin is of the age of eighteen years, and said Michael H. Martin is of the age of twenty years, now upon application of Julia Martin, Guardian of said Minors, it is

Ordered that Julia Martin be appointed Guardian Ad Litem for said minor defendants.

Witness the Honorable John C. Pollock, Judge of said Court at Leavenworth in said District, this 11th day of October, 1917.

JOHN C. POLLOCK,
United States District Judge.

Filed in the District Court on October 11, 1917.

26 *Answer of Julia F. and Michael H. Martin, Minors.*

The above named minor defendants, Julia F. Martin and Michael H. Martin by Julia Martin, their Guardian Ad Litem in answer to the Amended Bill of Complaint, filed herein, admit the allegations and facts therein contained and thereupon say:

That as the son and daughter of Thomas Martin, a deceased brother of Peter Martin, deceased, they are the owners in fee simple by right of inheritance of an undivided one (1/23) thirty-third of the real estate described in said Bill and entitled to the possession thereof and said defendants further say

That said real estate can not be partitioned in kind among the respective owners thereof without manifest injury to the rights of such owners; that the best interest of such owners will be more equitably subserved by the sale of said property, after due advertisement, in the manner prescribed by law.

The premises considered, defendants pray that they be adjudged to be the owners of an undivided one (1/23) thirty-third of said real estate that said real estate be sold in the manner prescribed by law; that said defendants be adjudged to be entitled to their respective shares of the proceeds derived from the sale of said property and that the same be distributed among them as may be consistent with equity and for their costs laid out herein.

JULIA MARTIN,

Guardian ad Litem for said Minors,

By GEO. F. BEATTY, *Attorney.*

Oct. 17, 1917.

Filed in the District Court on October 19, 1917.

27 *Answer of Bernard J. Martin et al.*

The above named defendants, Bernard J. Martin, Edward F. Martin, Thomas C. Martin, J. Vincent Martin, Leo R. Martin, Rachel I. Martin, Mary A. Standard and Anne F. Martin, in answer to the Amended Bill of Complaint, filed herein, admit the allegations and facts therein contained, thereupon say

That as the sons and daughters of Thomas Martin, a deceased brother of Peter Martin, deceased, they are the owners in fee simple by right of inheritance of an undivided eight (8/66) sixty-sixths of the real estate in Bill described and entitled to the possession thereof and further say

That said real estate can not be partitioned in kind among the owners thereof without manifest injury to the respective owners thereof; that the best interest of such owners will be more equitably subserved by the sale of said property, after due advertisement, in the manner prescribed by law.

The premises considered, defendants pray: that they be adjudged to be the owners of an undivided eight (8/66) sixty-sixths of said

real estate; that said real estate be sold in the manner prescribed by law; that said defendants be entitled to their respective shares of the proceeds derived from the sale thereof and that the same be distributed among them as may be consistent with equity, and for their costs laid out herein.

GEO. F. BEATTY,

Attorney for Defendants.

Salina, Kansas, October 17, 1917.

Filed in the District Court on October 19, 1917.

Answer of Joseph Hall et al.

The above named defendants, Joseph Hall, James Hall, Ellen Hall, Mary Hall, Thomas Hall, Gertrude Hall, Winnifred Hall and William Hall, in answer to the Amended Bill of Complaint, filed herein admit the allegations and facts therein contained and thereupon say

That as the sons and daughters of Bridget Hall, a deceased sister of Peter Martin, deceased, they are the owners in fee simple, by right of inheritance of an undivided one (1/6) sixth of the real estate in said Bill described, and entitled to the possession thereof, and said defendants further say

That said real estate can not be partitioned among the respective owners thereof without manifest injury to such owners; that the best interest of such owners will be more equitably subserved by the sale of said property after due advertisement in the manner prescribed by law.

The premises considered, defendants pray that they be adjudged to be the owners of an undivided one sixth of said real estate; that said real estate be sold in the manner prescribed by law; that said defendants be entitled to their share of the proceeds derived from the proceeds arising from the sale thereof and that the same be distributed among them as may be consistent with equity, and for their costs laid out herein.

GEO. F. BEATTY,

Attorney for Defendants.

Salina, Kansas, October 17, 1917.

Filed in the District Court on October 19, 1917.

Answer of John Martin.

The above named defendant, John Martin, in answer to the Amended Bill of Complaint filed herein, admits the allegations and facts therein contained, and thereupon says:

That as a brother of and heir at law of Peter Martin, deceased, he is the owner, in fee simple, by right of inheritance of an undivided one (1/6) sixth of the real estate in said bill described, and entitled to the immediate possession thereof, and further says:

That said real estate cannot be partitioned in kind among the respective owners thereof without manifest injury to such owners; that the best interests of such owners will be more equitably subserved by the sale of said property after due advertisement in the manner prescribed by law.

The premises considered, defendant prays that he be adjudged to be the owner of an undivided one (1/6) sixth of said real estate; that said real estate be sold in the manner prescribed by law and that said defendant be entitled to an one sixth (1/6) of the proceeds derived from the sale of said real estate, and that the proceeds arising from said sale be distributed as may be consistent with equity, and for costs herein laid out.

JOHN MARTIN,

By GEO. F. BEATTY,

His Attorney.

Oct. 17, 1917.

Filed in the District Court on October 19, 1917.

30 *Application for Order Taking Bill as Confessed.*

Come now the complainants above named and show to the Court that by virtue of an order issuing out of this Court, together with a certified copy of the Amended Bill of Complaint herein thereto attached duly, regularly and personally served upon the said defendant, Jane Kidd, on the 6th day of August, 1917, the said defendant was directed to answer said Amended Bill or plead thereto within twenty days from the service thereof, that the time within which an answer or other could be filed as provided in said order has long since elapsed, and that no answer or other pleading has been filed, therefore said complainants respectfully request that an order be entered in the order book taking said Amended Bill as confessed as to said defendant, Jane Kidd.

Salina, Kansas, November 21, 1917.

GEO. F. BEATTY,

Solicitor for Complainants.

Filed in the District Court on November 22, 1917.

Stipulation.

The said parties to this cause, other than said defendant, Jane Kidd, appearing by their respective solicitors of record; Geo. F. Beatty and Burch, Litowich and Royce, all of said parties being of full age and understanding, including said minors, said minors having attained their majority, subsequent to the commencement of this suit, hereby waive the provisions of the Kansas law relative to the appointment of appraisers and appraisal of property in parti-

tion and consent to the sale of the real estate described in the amended bill of complaint in this cause without appraisal.

31

BARTHOLOMEW SULLIVAN AND
MARGARET THOLEN,

Complainants,

By GEO. F. BEATTY,

Their Solicitor,

JOSEPH MARTIN,
PATRICK H. MARTIN,
ANNA MARTIN, AND
JOHN MARTIN,

Son of Joseph Martin;

JOSEPH MARTIN,

Administrator, Defendants,

By WILCOX, LITOWICH & BOYCE,

JOSEPH HALL,
JAMES HALL,
ELLEN HALL,
MARY HALL,
WILLIAM HALL,
WINNIFRED HALL,
GERTRUDE HALL,
THOMAS HALL,
BERNARD J. MARTIN,
EDWARD F. MARTIN,
THOMAS C. MARTIN,
LEO R. MARTIN,
J. VINCENT MARTIN,
MICHAEL H. MARTIN,
RACHEL I. MARTIN,
MARY A. STANDARD,
ANNE F. MARTIN,
JULIA F. MARTIN,

Defendants,

By GEO. F. BEATTY,

Their Solicitor,

Filed in the District Court on March 5, 1918.

Decree.

This cause came on to be heard at this term upon motion of the complainants above named, Bartholomew Sullivan and Margaret Tholen appearing by Geo. F. Beatty, their solicitor, in the cause wherein they are complainants and John Martin, Joseph Martin, Anna Martin, Jane Kidd, Joseph Hall, James Hall, Ellen Hall, Mary Hall, Thomas Hall, Winnifred Hall, Gertrude Hall, William Hall, Bernard J. Martin, Edward F. Martin, Patrick H. Martin, Thomas C. Martin, Leo R. Martin, J. Vincent Martin, Michael H. Martin, Rachel I. Martin, Mary A. Standard, Anne F. Martin, Julia F. Martin, Julia Martin, Guardian of Julia F. Martin and Michael

32 H. Martin, minors, John Martin, the son of Joseph Martin and Joseph Martin, Administrator of the estate of Peter Martin, deceased, are defendants, said defendants other than the said Jane Kidd appearing by Burch Litowich & Royce and Geo. F. Beatty, their respective solicitors, the said Jane Kidd not appearing but being in default, and it appearing

That the Bill of Complaint in this cause was filed on or about the 12th day of March, 1917, and that service of the same was duly made upon said Minors in the manner prescribed by law and that thereupon all defendants above named, other than said minors, waived the issuance and service of subpoena upon them and each of them and entered their voluntary appearance in said cause and it further appearing

That thereafter and on the 25th day of July, 1917, the said complainants filed in this cause their amended Bill in Equity and that service of the same together with an order requiring defendant, Jane Kidd, to answer or otherwise plead to said amended Bill was duly made upon said defendant and that thereafter on the 22d day of November, 1917, the said Jane Kidd failing to answer or otherwise plead to said amended Bill that an order taking said Bill as confessed as to said defendant, Jane Kidd, was entered in the order book and that more than thirty days have elapsed since the entry of said order taking said amended bill as confessed and that no proceeding has been taken or had by said Jane Kidd since the entry of said order taking said amended bill as confessed and it further appearing that all defendants above named have filed answer to said amended bill the said Julia F. Martin and Michael H. Martin, Minors, answering by their Guardian ad litem, Julia Martin, heretofore and on the 11th day of October, 1917, appointed herein, therein setting forth the right, title and interest of them and each of
33 them, the said defendants, in and to the real estate herein-after described and therein waiving partition of said realty in kind and consenting to the sale of the same without appraisalment, now therefore

Upon consideration of said amended Bill of Complaint, the answers thereto of said defendants, the said proofs and the default of the said Jane Kidd, as aforesaid, the Court finds

That said amended bill of complaint and the allegations therein contained are true; that heretofore and on the 29th day of January, 1915, one Peter Martin died intestate, unmarried and without issue, and at the time of his death, he, the said Peter Martin, was the owner in fee simple of the real estate hereinafter described; and the Court further finds

That the said Peter Martin left surviving him as his sole and only heirs at law the following named persons and that said persons and each of them are now of full age and are seized, in fee simple, by right of inheritance, of portions of real estate as hereinafter set forth, that is to say:

The said complainants, Bartholomew Sullivan and Margaret Tholen, the son and daughter of Rachel Sullivan, a deceased sister of the said Peter Martin, an equal one-twelfth (1/12) each.

The said defendant, John Martin, a brother of said decedent, a one sixth (1/6).

That said defendant, Joseph Martin, a brother of said decedent a one sixth (1/6) and in addition thereto as grantee of said defendant Patrick H. Martin a one sixty-sixth, or an undivided twelve sixty-sixths (12/66).

34 The said defendant, Anna Martin, now known as Sister Mary Jerome, a sister of said decedent, a one-sixth (1/6).

The said defendants, Joseph Hall, James Hall, Ellen Hall, Mary Hall, William Hall, Gertrude Hall, and Thomas Hall, the sons and daughters of Bridget Hall, a deceased sister of the said decedent, an equal one-fortyeighth (1/48) each.

The said defendants, Bernard J. Martin, Edward F. Martin, Patrick H. Martin, Thomas C. Martin, Leo R. Martin, J. Vincent Martin, Michael H. Martin, Rachel I. Martin, Mary A. Standard, Anne F. Martin and Julia F. Martin, the sons and daughters of Thomas Martin, a deceased brother of said decedent, an equal one-sixty-sixth (1/66) each, and the Court further finds that said Patrick H. Martin has conveyed his said one-sixty-sixth (1/66) to Joseph Martin who is now the owner thereof; and

That the defendant, Jane Kidd, is without any right, title, estate or interest in, to or upon said real estate or any part thereof.

That the said defendant, Joseph Martin, Administrator of the estate of said decedent, is without any right, title, estate or interest in, to or upon said real estate or any part thereof.

That the said defendant, John Martin, the son of Joseph Martin, is a tenant at will of such portions of the real estate hereinafter described and has no other right, title, estate or interest in, to or upon such real estate other than to harvest and remove such growing crops sowed by him thereon, and the Court further finds that such real estate, to wit:

35 The North Half of the Northeast Quarter of Section Twenty-two; also the South Half of the Southeast Quarter of Section Fifteen; also the Southeast Quarter of the Southwest Quarter of Section Fifteen; also the Southeast Quarter of Section Eighteen; all lying and being in Township Fourteen, South, Range One, West of the Sixth Principal Meridian, in the County of Saline and State of Kansas, containing Three Hundred Sixty Acres, more or less, according to the Government Survey thereof,

together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, should be offered for sale and sold, at public outcry, without appraisal, free, clear and discharged of and from all and any the claims or demands of whatsoever kinds or nature of any and all the parties to this suit or any and all person or persons claiming by, through or under them or any of them, to the highest bidder for cash, in parcels altogether, that is to say: the realty situate in each Section to be sold separately, thereupon all of said realty to be offered for sale and sold, thereupon the highest aggregate amount or amounts bid for said realty shall prevail, and it is therefore

Ordered, adjudged and decreed; that the right, title, estate and interest of said parties to this suit in and to the real estate herein-after described be and the same is hereby determined as hereinbefore found and set out; that said real estate be sold at public outcry, at the east door of the Saline County Court House, in the City of Salina, County of Saline and State of Kansas, in the manner and upon the terms hereinbefore found and set out, and; that notice of such sale, the time, place, manner and terms thereof, be given in the manner prescribed by law, by advertisement in the Salina Sun, a newspaper printed and published in Saline County, Kansas, and of general circulation in said County and State, and it is further

36 Ordered, adjudged and decreed that on account of his special fitness that F. L. Campbell, as Special Master in Chancery, do execute this Decree and make such sales or sale of said real estate as herein ordered and decreed and that he apply the proceeds derived from the sale of said real estate as follows: (1) In the payment of costs of this suit, including the compensation and expenses of respective solicitors, the execution of this decree and of making such sale. (2) In the payment of all Taxes and legal assessments due and outstanding against the said real estate. (3) The balance then remaining shall be distributed among the said complainants and defendants accordingly as the respective interests of them and each of them appear as hereinbefore computed and determined, and it is further

Ordered, adjudged and decreed; That the said F. L. Campbell, Special Master in Chancery, as aforesaid, execute to said purchasers or purchaser of said real estate a good and sufficient instrument of conveyance of and to said real estate, reciting therein that said parties to this suit and all persons claiming through, by or under them are forever barred from all right, title, estate, interest, claim, demand or equity of redemption in, to or upon said real estate or any part thereof, except the rights of the said John Martin, as hereinbefore found and set out, and that the possession of said real estate together with the tenements, hereditaments and appurtenances thereunto belonging, be, immediately delivered to the purchasers or purchaser thereof, subject however to the rights of said John Martin, as hereinbefore found, and it is further

Ordered, adjudged and decreed that the said F. L. Campbell, as Special Master in Chancery, do make due return of all his proceedings hereunder unto the said Court for action of the Court
37 thereon, prior to the delivery of the instrument of instruments of conveyance of said property to the purchaser or purchasers thereof, and the Court retains jurisdiction of this cause for the purpose of enforcing the provisions of this Decree by writ of assistance if necessary to place the purchaser or purchasers in the possession of the premises directed to be sold, and otherwise, to the end that this Decree may be fully carried out.

Witness the Honorable John C. Pollock, Judge of said Court, this 11th day of March, 1918.

JOHN C. POLLOCK, *Judge.*

Approved:

BARTHOLOMEW SULLIVAN AND
MARGARET THOLEN,

Complainants,

By GEO. F. BEATTY,

Their Solicitor,

JOHN MARTIN,
JOSEPH HALL,
JAMES HALL,
ELLEN HALL,
MARY HALL,
THOMAS HALL,
GERTRUDE HALL,
WINNIFRED HALL, AND
WILLIAM HALL,

Defendants,

By GEO. F. BEATTY,

Their Solicitor,

BERNARD J. MARTIN,
EDWARD F. MARTIN,
THOMAS C. MARTIN,
LEO R. MARTIN,
J. VINCENT MARTIN,
RACHEL I. MARTIN,
MARY A. STANDARD,
ANNE F. MARTIN,

By GEO. F. BEATTY,

Their Solicitor,

JOSEPH MARTIN,

By BURCH, LITOWICH & ROYCE,

His Solicitor,

ANNA MARTIN,

Now Known as Sister Mary Jerome,

By BURCH, LITOWICH & ROYCE,

Her Solicitor,

PATRICK H. MARTIN,

By BURCH, LITOWICH & ROYCE,

His Solicitors,

MICHAEL H. MARTIN AND
JULIA F. MARTIN,

Appearing by Julia Martin,

Their Guardian ad Litem, and

By GEO. F. BEATTY,

Their Solicitor,

JOSEPH MARTIN,

Administrator of the Estate

of Peter Martin, Deceased,

JOHN MARTIN,

The Son of Joseph Martin,

By BURCH, LITOWICH & ROYCE,

Their Solicitors,

Filed in the District Court on March 11, 1918.

Report of Special Master on Sale of Real Estate.

To the Honorable John C. Pollock, Judge of the District Court of the United States, District of Kansas, First Division:

I, F. L. Campbell, Special Master appointed for the purpose of making sale of the real estate decreed to be sold in the above entitled cause and of completing proceedings thereunder, a copy of the decree rendered herein being hereto attached and made a part of this report, respectfully report:

That by virtue of and in pursuance of the terms of said decree I caused public notice to be given that I would on Saturday the 20th day of April, 1918 at 2 o'clock P. M. of said date at the east door of the Salina County Court House in the city of Salina, Saline County, Kansas, offer at public sale, and sell to the highest and best bidder for cash the following described real estate, lands and tenements to-wit:

The North Half (N. $\frac{1}{2}$) of the Northeast quarter (N. E. $\frac{1}{4}$) of Section Twenty-two (22); also the South Half (S. $\frac{1}{2}$) of the Southeast quarter (S. E. $\frac{1}{4}$) of Section Fifteen (15); also the Southeast quarter (S. E. $\frac{1}{4}$) of the Southwest quarter (S. W. $\frac{1}{4}$) of Section Fifteen (15); also the Southeast quarter (S. E. $\frac{1}{4}$) of Section Eighteen (18). All lying and being in Township Fourteen (14) South, Range One (1) West of the Sixth Principal Meridian in the County of Saline, State of Kansas, containing Three Hundred and Sixty

(360) acres more or less according to the government survey thereof. Said notice was given by advertisement in the

Salina Sun, a weekly newspaper printed and published in the city of Salina, Saline County, Kansas for six consecutive weeks, the first publication being on Saturday March 16th, 1918 and each Saturday thereafter until and including April 20th, 1918, a copy of the said notice as advertised and published in said newspaper, together with proof of publication is hereto attached and made a part of this report.

I further report that at said time and place I announced I would offer said lands for sale in separate tracts and that thereafter would offer said land for sale as a whole, and that the highest aggregate amount or amounts bid for *sale* realty should prevail.

Thereupon I offered for sale the South Half (S. $\frac{1}{2}$) of the Southeast quarter (S. E. $\frac{1}{4}$), and the Southeast quarter (S. E. $\frac{1}{4}$) of the Southwest quarter (S. W. $\frac{1}{4}$) of Section Fifteen (15), Township Fourteen (14), Range One (1), containing One Hundred and Twenty (120) acres more or less, and declared the bid closed with the bid of Mrs. Julia Martin of Thirteen Thousand Two Hundred and no/100 (\$13,200.00) Dollars, her bid being the highest and best bid therefor.

I then offered for sale the Southeast quarter (S. E. $\frac{1}{4}$) of Section Eighteen (18), Township Fourteen (14), Range One (1), containing One Hundred Sixty (160) acres more or less and declared the bid closed with the bid of Mrs. Julia Martin of Eight Thousand Six Hundred Forty and no/100 (\$8640.00) Dollars, her bid being the highest and best bid therefor.

I then offered for sale the North Half ($\frac{1}{2}$) of the northeast quarter (N. E. $\frac{1}{4}$) of Section Twenty-two (22), township Fourteen (14), Range One (1), containing Eighty (80) acres more or less announcing that of the Twenty-two (22) acres in wheat on said land one-third ($\frac{1}{3}$) of the crop when harvested would go to the purchaser, the other two-thirds ($\frac{2}{3}$) of said wheat when harvested going to the now tenant, and declared the bid closed with the bid of Mrs. Julia Martin of Six Thousand Eight Hundred and no/100 (\$6,800.00) Dollars, her bid being the highest and best bid therefor.

I then offered for sale in one tract the South Half (S. $\frac{1}{2}$) of the Southeast quarter (S. E. $\frac{1}{4}$) and the Southeast quarter (S. E. $\frac{1}{4}$) of the Southwest quarter (S. W. $\frac{1}{4}$) of Section Fifteen (15), Township Fourteen (14), Range One (1); and the North Half ($\frac{1}{2}$) of the Northeast quarter (N. E. $\frac{1}{4}$) of Section Twenty-two (22), Township Fourteen (14), Range One (1), containing Two Hundred (200) acres more or less announcing the same provision relative to the growing wheat on Section Twenty-two (22) as heretofore announced and closed the bid with the bid of Mrs. Julia Martin of Twenty thousand Two Hundred and no/100 (\$20,200.00) Dollars, her bid being the highest and best bid therefor.

Thereupon I offered for sale in one tract all of the lands hereinbefore described and advertised to be sold herein, making the same announcement relative to the division of the growing wheat on Section Twenty-two (22) and sold the same to John Martin, Sr. for the sum of Thirty eight Thousand One Hundred and no/100 — (\$38,100.00), he being the highest and best bidder therefor.

I do further report that the total amount of said sale is Thirty eight Thousand One Hundred and no/100 (\$38,100.00) Dollars, that the purchaser, John Martin, Sr., immediately deposited with the Master his check for Five Thousand and no/100 (\$5,000.00) Dollars, and that your Master agreed with said purchaser that the balance of said purchase price, being Thirty three Thousand One Hundred and no/100 (\$33,100.00) Dollars, should be paid your Special Master immediately upon confirmation of said sale by this Court.

I further report that the cost of publishing notice of said sale is \$15.00, that the Master's incidental expenses are \$23.00.

I respectfully submit this report to this court and ask that the same may be approved, and that allowance be made me as Special Master for services in this cause performed and rendered, and for expenses necessarily incurred in making sale and such expenses as hereinbefore set forth amount to \$38.00.

F. L. CAMPBELL,
Special Master.

Affidavit of Publisher.

I, W. H. Johnson, being duly sworn, declare that I am the publisher of the Salina Sun, a weekly newspaper published at Salina, Saline County, Kansas, and of general circulation in said county,

and continuously and uninterruptedly published for 52 weeks prior to the first publication of the attached notice, and that the attached Sale Notice has been correctly published in the entire issue of said newspaper — consecutive weeks, said publication being on the following dates:

First Publication	March 16, 1918
Second	“	“ 23, 1918
Third	“	“ 30, 1918
Fourth	“	April 6, 1918
Fifth	“	“ 13, 1918
Sixth	“	“ 20, 1918

W. H. JOHNSON.

Subscribed and sworn to before me this 20th day of April, 1918.

[SEAL.]

C. W. LYNN,

Notary Public for Saline County, Kansas.

Till January 30th, 1921.

Printer's Fee, \$15.00.

42 (First Published March 16, 1918.)

Sale Notice.

In the District Court of the United States for the District of Kansas,
First Division.

In Equity. No. 190-N.

BARTHOLOMEW SULLIVAN and MARGARET THOLEN, Complainants,

vs.

JOHN MARTIN, JOSEPH MARTIN, ANNA MARTIN, Now Known as Sister Mary Jerome; Jane Kidd, Sole Devises and Legatee under and by Virtue of the Last Will and Testament of Margaret Ingoldsbey, Deceased; Joseph Hall, James Hall, Ellen Hall, Mary Hall, William Hall, Gertrude Hall, Winifred Hall, Thomas Hall, Bernard J. Martin, Edward F. Martin, Thomas C. Martin, Patrick H. Martin, Leo R. Martin, J. Vincent Martin, Michael H. Martin, Rachel I. Martin, Mary A. Standard, Anne F. Martin, Julia F. Martin, Julia Martin, Guardian of Michael H. Martin and Julia F. Martin, Minors; Joseph Martin, Administrator of the Estate of Peter Martin, Deceased, and John Martin, the Son of Joseph Martin, Defendants.

Public notice is hereby given that under and by virtue of a decree of the District Court of the United States for the District of Kansas, First Division, filed and recorded in the above entitled suit, I will, on Saturday, the 20th day of April, 1918, at 2 o'clock p. m., on said date, sell at public sale, at auction, according to law, to the highest

and best bidder, for cash in hand, without appraisement, at the east door of the Saline county court house, in the City of Salina, County of Saline, and State of Kansas, the following described real estate, together with the tenements, hereditaments and appurtenances thereunto, belonging, to wit:

"The north half of the northeast quarter of section twenty-two; also the south half of the southeast quarter of section fifteen; also the southeast quarter of the southwest quarter of section fifteen; also the southeast quarter of section eighteen, all lying and being in township fourteen, south, range one, west, of the Sixth principal meridian, in the county of Saline and State of Kansas, containing three hundred sixty acres, more or less, according to the government survey thereof."

Said real estate will be offered for sale and sold as follows:

First. The realty situate in each section will be offered for sale separately.

Second. The whole of said real estate will be offered for sale in its entirety, and thereupon the highest aggregate amount or amounts bid for said realty shall prevail.

A good and sufficient deed or deeds will be executed to the purchaser or purchasers immediately upon confirmation of said sale or sales by said court.

F. L. CAMPBELL,
Special Master.

Copy of Decree attached to Master's Report, the same as set out in full on page 31 and not here repeated.

Filed in the District Court on April 22, 1918.

43 *Motion for Confirmation of Sale.*

Come now the above named complainants and move the Court to confirm the sale which was made by F. L. Campbell, Esquire, Special Master in Chancery for the District of Kansas, First Division, in pursuance of the decree rendered in this cause on the 11th day of March, 1918, and the report of said Master of his actions thereon filed in this Court on the — day of April, 1918.

GEO. F. BEATTY,
Solicitor for Complainants.

Filed in the District Court on April 23, 1918.

Order Confirming Sale.

The report of F. L. Campbell, Special Master in Chancery of this court in this cause, having been filed in this court on the 22nd day of April, 1918, showing that on the 20th day of April, 1918, at the hour of two o'clock in the afternoon of that day, pursuant to Notice theretofore duly given, has sold at public auction to John Martin of

Solomon, Saline County, Kansas, at and for the sum of Thirty-eight thousand one hundred (\$38,100.00) Dollars, all of the property specifically mentioned and described in the Amended Bill of Complaint in this cause, in the decree hereinbefore rendered and the Report of said Master filed herein on the — day of April, 1918; and

Now, on this 23rd day of April, 1918, the Court having fully considered said report and it appearing that the said sale was duly and regularly made by said Master in accordance with law and the course and practice of this Court and in the manner provided in said decree, the Court being duly advised in the premises, and it
44 further appearing that no objections have been filed to the approval of said Report and the confirmation of said sale.

Wherefore, it is by the Court ordered, adjudged and decreed that the said report of the said Master, and the said sale by him made as set forth in his said report, ~~be~~, and the same is, hereby approved and confirmed; and it is further ordered, adjudged and decreed that proper and legal conveyance of all of said real estate and the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining are hereby directed to be executed to the said purchasers in the manner and by the said Special Master as provided for by the decree of this Court made and entered herein on the 11th day of March, 1918.

Witness the Honorable John C. Pollock, Judge of said Court at Kansas City in said District, this 23rd day of April, 1918. It is further ordered jurisdiction of this cause is expressly reserved for the purpose of fixing the compensation of the Special Master and solicitors for the parties, ordering payment made, distributing the purchase price and to make any and all further orders herein as equity and justice may demand.

JOHN C. POLLOCK, *Judge.*

•

Approved:

BARTHOLOMEW SULLIVAN &
MARGARET THOLEN,

Complainants, and

JOHN MARTIN,
JOSEPH HALL,
JAMES HALL,
ELLEN HALL,
MARY HALL,
THOMAS HALL,
GERTRUDE HALL,
WINNIFRED HALL,
WILLIAM HALL,
BERNARD J. MARTIN,
EDWARD F. MARTIN,
THOMAS C. MARTIN,
J. VINCENT MARTIN,
LEO R. MARTIN,
MICHAEL H. MARTIN,
RACHEL I. MARTIN,
MARY A. STANDARD,
ANNE F. MARTIN,
JULIA F. MARTIN,
JULIA MARTIN,

Guardian ad Litem,

By GEO. S. BEATTY,

Their Solicitor,

JOSEPH MARTIN,
ANNA MARTIN,

Now Known as Sister Mary Jerome;

PATRICK H. MARTIN,
JOSEPH MARTIN,

Administrator of the Estate of

Peter Martin, Deceased, and

JOHN MARTIN,

The Son of Joseph Martin,

By BURCH, LITOWICH & ROYCE,

Their Solicitors,

Filed in the District Court on April 23, 1918.

Now come the above named complainants, appearing by their counsel, Geo. F. Beatty, the said defendants, other than defendant, Jane Kidd, appearing by their respective counsel, Burch, Litowich & Royce, and Geo. F. Beatty, and show to the court,

That heretofore and on the 11th day of March, 1918, at Wichita, in said District, a decree was made and entered in the above entitled cause, finding and determining the rights and interest of the parties

(3) and that of the sum then remaining, a one seventh be retained by said Special Master, subject to the further order of the Court and that the balance thereof be distributed among the parties to this cause, complainant and defendant, in this action, to-wit:

Bartholomew Sullivan and Margaret Tholen, a one twelfth ($1/12$) each,

John Martin, Joseph Martin and Anna Martin, a one sixth ($1/6$) each,

Joseph Martin, purchaser of the undivided interest of Patrick H. Martin, defendant, a one ($1/66$) sixty-sixth,

Bernard J. Martin, Edward F. Martin, Leo R. Martin, J. Vincent Martin, Michael H. Martin, Thomas C. Martin, Rachel I. Martin, Mary A. Standard, Anne F. Martin, and Julia F. Martin, a one ($1/66$) sixty-sixth each,

Joseph Hall, James Hall, Ellen Hall, Mary Hall, Thomas Hall, Winifred Hall, Gertrude Hall and William Hall, a forty ($1/48$) eighth each,

And it is further ordered that the said Special Master issue proper vouchers in payment of the interests as above set forth and the Court hereby retains jurisdiction of this cause for the purpose of such further and other orders in the premises as may appear equitable and just.

Witness the Honorable John C. Pollock, Judge of said Court, at Salina, in said District, this 13th day of May, 1918.

JOHN C. POLLOCK, *Judge*.

O. K.

BURCH, LITOWICH & BOYCE,

Atty. for Joseph Martin et al.

GEO. F. BEATTY,

*Atty. for Bartholomew v. Sullivan et al., and
John Martin et al.*

Filed in the District Court on May 13, 1918.

48

Petition for Rehearing.

Comes now defendant Jane Kidd in the above entitled cause and prays that the decree heretofore entered herein be set aside and that a rehearing of said cause be granted for the following reasons:

1. Because the court did not have jurisdiction over this defendant at the time of the rendition and entry of the decree herein.

2. Because the court did not at the date of the rendition and entry of the decree herein have jurisdiction over the interest of this defendant or jurisdiction to adjudicate that this defendant had no interest in the real estate described in complainants' amended bill of complaint.

3. Because the purported service of subpoena upon this defendant was without the United States and in the Dominion of Canada.

4. Because the decree in this cause excluded this defendant from all right, title or interest in the property described in complainants' amended bill of complaint and the proceeds of the sale thereof when such ruling and decree was against all the evidence in the case.

5. Because under all the evidence in the case this defendant is entitled to one-seventh interest in the property described in complainants' amended bill of complaint.

6. Because the decree in this cause excluded this defendant from all right, title and interest in the property described in complainants' amended bill of complaint and the proceeds of the sale thereof for the reason either that this defendant and one Margaret Ingoldsbys referred to in complainants' amended bill of complaint were or one of them was at the time in question a citizen and resident of the Dominion of Canada, when such ruling is and was contrary to the treaty relations existing at all the times in question between
49 the United States and the Dominion of Canada.

Wherefore this defendant prays the court to set aside the decree entered in this cause and grant her a rehearing therein with leave to appear and defend.

O. H. DEAN,
W. D. McLEOD,
H. M. LANGWORTHY,
ROY R. THOMSON,

Attorneys for Defendant Jane Kidd.

Filed in the District Court on June 18, 1918.

Application for Leave to File Intervening Petition.

Now on this day comes Jane Kidd, by her solicitors, Warner, Dean, McLeod & Langworthy, and respectfully prays that she be granted leave to file an intervening petition praying the court that she be allowed to participate in the net proceeds of the sale of the real estate described in the amended bill of complaint herein as the sole devisee of Margaret Ingoldsbys, who was a full sister of Peter Martin, deceased, referred to in said bill of complaint.

And said Warner, Dean, McLeod & Langworthy, as solicitors for said Jane Kidd, further represent and state to the court that they were employed to represent said Jane Kidd through the Honorable C. L. N. Pearson, British Consul, at St. Louis, Missouri, and that the said The Honorable C. L. N. Pearson, as such British Consul, has requested them to pray this Honorable court on behalf of Jane Kidd that if in the judgment of this court it be proper, she be given further
50 opportunity to present to this court the question of the right of inheritance of Margaret Ingoldsbys, now deceased, referred to in the bill of complaint herein, and of said Jane Kidd, as legatee and devisee of the said Margaret Ingoldsbys, and upon the question of the right of the said Jane Kidd as such legatee and devisee to share in the net proceeds of the sale of the real estate referred to in the bill of complaint herein, pursuant to the decrees of this court heretofore entered herein.

And said Jane Kidd prays for such other and further orders as to the court may seem equitable and just.

JANE KIDD,
By WARNER, DEAN, McLEOD &
LANGWORTHY,
ROY B. THOMSON,
Her Solicitors.

Filed in the District Court on June 19, 1918.

*Order Granting Leave to File Intervening Petition and Order on
Intervening Petition of Jane Kidd.*

Now on this day the above entitled cause came on to be further heard, the complainants and various defendants appearing by their solicitor George F. Beatty and all the remaining defendants, excepting Jane Kidd, appearing by their solicitors Burch, Litowich & Royce, and the defendant Jane Kidd appearing by her solicitors Warner, Dean, McLeod and Langworthy and Roy B. Thomson, and thereupon the said Jane Kidd through her solicitors presented to the court her petition for rehearing heretofore filed herein and also her application for leave to intervene and file her intervening petition praying that she be allowed to share in the net proceeds of the sale of the real estate described in the amended bill of complaint herein, as the sole devisee of Margaret Ingoldsbly, deceased, who was a sister of said Peter Martin, deceased, and it appearing to the court that the Honorable C. N. M. Pearson, British Consul, at St. Louis, has requested that the said Jane Kidd be permitted to be heard further by

51 this court upon the question of the right of inheritance of the said Margaret Ingoldsbly now deceased, and of said Jane Kidd as the legatee and devisee of the said Margaret Ingoldsbly and upon the question of the right of said Jane Kidd as such legatee and devisee to share in the net proceeds of the sale of said real estate pursuant to the decree of this court heretofore entered herein, and it appearing to the court that it would be right, just and equitable that said Jane Kidd should be further heard upon such questions.

It is by the Court ordered that said Jane Kidd be and she is hereby permitted to file such intervening petition and the same is ordered filed as of this date, to which order, ruling and judgment of the court said George F. Beatty and said Burch, Litowich & Royce on behalf of their respective clients duly objected and excepted at the time.

Thereupon said petition for rehearing and said intervening petition of said Jane Kidd praying for an order permitting her to share in the distribution of the net proceeds of the sale of said real estate, as the sole legatee and devisee of Margaret Ingoldsbly, deceased, who was a sister of said Peter Martin, deceased, came regularly on for hearing before the court and the court having heard the arguments of counsel and being fully advised in the premises, the court finds that the said Jane Kidd is the sole devisee of Margaret Ingoldsbly, who was a sister of Peter Martin, deceased, and that the said Margaret Ingoldsbly died on or about the 28th day of July, 1916, after the death of said Peter Martin, and that under the laws and treaties in

force and effect at said times the said Margaret Ingoldsbey was entitled to inherit from the said Peter Martin as one of his heirs a one-seventh interest in and to the real estate referred to in the bill of complaint herein, and that the said Jane Kidd as the sole legatee and devisee of said Margaret Ingoldsbey is entitled to receive the share in the net proceeds of the sale of said real estate, which said Margaret Ingoldsbey would have received if living; it is therefore by the court considered, ordered, adjudged and decreed as follows, to-wit:

52 1. That after the payment of the fees, expenses, costs and taxes provided for under and by virtue of the order of this court heretofore entered herein on the 13th day of May, 1918, the said F. L. Campbell, Special Master, herein, be and he is hereby ordered and directed to pay to Warner, Dean, McLeod & Langworthy, solicitors for Jane Kidd, one-seventh of the proceeds of the sale of said real estate, then remaining in his hands, which said sum was by said order of court directed to be retained by said Special Master subject to the future order of this court.

2. That complainants and defendants other than said Jane Kidd are given ninety days' time from this date within which to perfect an appeal and give a supersedeas bond in the sum of \$25,000.00 as provided by law, and that during said period of ninety days said special master be and he is hereby ordered and directed to place said sum of money so ordered paid to said solicitors of said Jane Kidd on deposit at the Merchants National Bank at Topeka, Kansas, at the highest rate of interest obtainable and at the end of said period of ninety days, if said appeal has not been perfected and said supersedeas bond given as required by law, then said sum of money, together with interest accrued thereon shall be paid by said Special Master to said solicitors for said Jane Kidd as aforesaid, to all of which adverse rulings of the court counsel for complainants and all of the defendants except Jane Kidd object and except, including the rulings of the court as to retaining jurisdiction over one seventh of the net proceeds of the sale of said real estate and the rights of the defendant, Jane Kidd, to file said intervening petition.

Witness the Honorable John C. Pollock, Judge of said Court at Kansas City, in said District this 19th day of June, 1918.

JOHN C. POLLOCK, *Judge*.

O. K.

BURCH, LITOWICH & BOYCE.

GEO. F. BEATTY.

WARNER, DEAN, McLEOD & LANGWORTHY.

Filed in the District Court on June 19, 1918.

53

Intervening Petition.

Now comes Jane Kidd, and respectfully represents and states to the court as follows:

1. That at the times mentioned in the Bill of Complaint herein, she was, and now is, a resident and citizen of the Dominion of Can-

ada, and a subject of the United Kingdom of Great Britain and Ireland.

2. That at the times referred to in said Bill of Complaint, Margaret Ingoldsby was a resident and citizen of the Dominion of Canada, and a subject of the United Kingdom of Great Britain; that said Margaret Ingoldsby was a full sister of deceased, Peter Martin, referred to in said Bill of Complaint; that the said Margaret Ingoldsby, died on or about July 28th, 1916, and the said Jane Kidd was, and is, the sole legatee and devisee of the said Margaret Ingoldsby.

3. That under and by virtue of the laws and treaties in force and effect at, before and since the time of the death of the said Peter Martin, and at, before and since the time of the death of the said Margaret Ingoldsby, the said Margaret Ingoldsby was and is entitled to and did inherit a one-seventh interest in and to said real estate described in said Bill of Complaint as one of the heirs of the said Peter Martin, and said Jane Kidd as the sole legatee and devisee of the said Margaret Ingoldsby, became and was and is entitled to receive the share of the said Margaret Ingoldsby in and to the said real estate so owned by the said Peter Martin, and is now entitled to receive the share of the net proceeds derived from the sale of said real estate, which the said Margaret Ingoldsby would have been entitled to receive if living.

4. That owing to serious illness, said Jane Kidd was unable to be present or to arrange for the presentation to this court of her rights in the premises, at the times of the orders heretofore made and entered in this cause.

5. That by virtue of the orders heretofore entered herein, 54 this court has full and complete jurisdiction to ascertain, adjudge and decree the right and interest of the said Jane Kidd in and to the net proceeds of the sale of said real estate, sold pursuant to the orders of court heretofore entered herein.

Wherefore, said Jane Kidd prays that an order be entered herein adjudging and decreeing that said Jane Kidd is entitled to a one-seventh interest in and to the net proceeds of the sale of said real estate, and that the special master herein be ordered and directed to pay to said Jane Kidd a one-seventh interest of said net proceeds, and said Jane Kidd prays for such other and further orders as to the court may be just and equitable in the premises.

JANE KIDD,

By WARNER, DEAN, McLEOD &
LANGWORTHY,
ROY B. THOMSON,

Her Solicitors.

Filed in the District Court on June 19, 1918.

Assignment of Errors.

Now come the complainants and defendants in the above entitled cause, other than said defendant, Jane Kidd, and file the following

Assignments of Error upon which they will rely upon their prosecution of the appeal in the above entitled cause from the holding and decree made by this Honorable Court upon the 19th day of June A. D. 1918.

I.

That the United States District Court for the District of Kansas, First Division, erred in granting the application of the said defendant, Jane Kidd, for leave to *trial* her intervening petition in said cause.

II.

That the United States District Court for the District of Kansas, First Division, erred in adjudging decreeing said defendant Jane Kidd to be entitled, under the provisions of the existing treaties between the United States of America and the Kingdom of
 55 Great Britain and Ireland, to a one seventh ($1/7$) of the net proceeds derived from the proceeds of the sale of the real estate in the Amended Bill of Complaint, herein described, and that the construction placed upon said treaties by said Court is erroneous.

Wherefore, the above named complainants and defendants other than said defendant, Jane Kidd, humbly pray that said Supreme Court of the United States reverse said judgment, decree order and that said District Court of the United States, District of Kansas, First Division, be ordered to enter a decree reversing the decision of the lower Court in said cause.

GEO. F. BEATTY,

BURCH, LITOWICH AND ROYCE,

Solicitors for Appellants.

Filed in the District Court on Sept. 17, 1918.

Petition for Appeal.

To the Honorable the Judges of the United States District Court for the District of Kansas:

The above named complainants and defendants other than said Jane Kidd, feeling themselves aggrieved by the decree made and entered in this cause on the 19th day of June, A. D. 1918, do hereby appeal from said order, decree, to the Supreme Court of the United States, for the reasons specified in the Assignments of Error which is filed herewith, and they pray that their appeal be allowed and that Citation issued as provided by law, and desiring to supersede the execution of the decree, petitioners here tender bond in the amount required by the provisions of said order for such purpose and pray that with the allowance of the appeal a supersedeas be issued, and that a transcript of the records, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the Su-

preme Court of the United States, sitting at the City of Washington, in the District of Columbia.

And your petitioners further pray that the proper order touching the security to be required and the supersedeas to be issued to perfect their appeal be made.

GEO. F. BEATTY AND

BURCH, LITOWICH AND ROYCE,

Solicitors for Petitioners.

The above petition is hereby granted and the appeal allowed upon giving bond conditioned as required by law, in the sum of Two Thousand Five Hundred (\$2500.00) Dollars, the same to act as a supersedeas bond and also as a bond for costs and damages on appeal.

Dated this 17th day of September, A. D. 1918.

JOHN C. POLLOCK, *Judge.*

Filed in the District Court on September 17, 1918.

Bond on Appeal.

Know All Men by These Presents:

That we, Bartholomew Sullivan, Margaret Tholen, John Martin, Joseph Martin, Anna Martin, now known as Sister Mary Jerome, Joseph Hall, James Hall, Ellen Hall, Mary Hall, William Hall, Gertrude Hall, Winnifred Hall, Thomas Hall, Bernard J. Martin, Edward F. Martin, Thomas C. Martin, Leo R. Martin, J. Vincent Martin, Michael H. Martin, Rachel I. Martin, Mary A. Standart, Anne F. Martin, Julia F. Martin, as principals, and J. P. Beems and William Sullivan of Salina, Kansas, as sureties, are firmly held and bound unto Jane Kidd, in the full and just sum of Two Thousand Five Hundred (\$2500.00) Dollars, to be paid to the said Jane Kidd, her heirs, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators and successors, jointly and severally

by these presents. Sealed with our seals and dated this 16th day of September, in the year of our Lord one thousand nine hundred and eighteen.

Whereas, lately at the June term, A. D. 1918, of the District Court of the United States for the First Division of the Judicial District of Kansas, in a suit pending in the said court between Bartholomew Sullivan, and Margaret Tholen, complainants, vs. John Martin, Joseph Martin, Anna Martin, now known as Sister Mary Jerome, Jane Kidd, sole devisee and legatee under and by virtue of the Last Will and Testament of Margaret Ingoldsbey, Deceased, Joseph Hall, James Hall, Ellen Hall, Mary Hall, William Hall, Gertrude Hall, Winnifred Hall, Thomas Hall, Bernard J. Martin, Edward F. Martin, Thomas C. Martin, Patrick H. Martin, Leo R. Martin, J. Vincent Martin, Michael H. Martin, Rachel I. Martin, Mary A. Standart, Anne F. Martin, Julia F. Martin, Julia Martin, guardian of Michael H. Martin and Julia F. Martin, minors, Joseph Martin,

administrator of the estate of Peter Martin, deceased, and John Martin the son of Joseph Martin, defendants, judgment was rendered in favor of said Jane Kidd and against the complainants and defendants, other than the said Jane Kidd, herein, and the said complainants and defendants, other than the said Jane Kidd, have obtained an appeal of the said Court to reverse the judgment in the aforesaid suit and the citation directed to the said Jane Kidd citing and admonishing her to be and appear in the Supreme Court of the United States at the City of Washington, District of Columbia, thirty days from and after the date of said citation.

Now, the condition of the above obligation is such, that if the said Bartholomew Sullivan, Margaret Tholen, John Martin, Joseph Martin, Anna Martin, now known as Sister Mary Jerome, Joseph Hall, James Hall, Ellen Hall, Mary Hall, William Hall, Gertrude Hall, Winnifred Hall, Thomas Hall, Bernard J. Martin, Edward F. Martin, Thomas C. Martin, Leo R. Martin, J. Vincent Martin, Michael H. Martin, Rachel I. Martin, Mary A. Standart, Anne F. Martin, and Julia F. Martin, shall prosecute said appeal to affect and
 58 answer all damages and costs if the said parties last mentioned fail to make good their plea, then the above obligation to be void, else to remain in full force and virtue.

Scaled and delivered in presence of

BARTHOLOMEW SULLIVAN, [SEAL.]
 MARGARET THOLEN,
 JOHN MARTIN,
 JOSEPH HALL,
 JAMES HALL,
 ELLEN HALL,
 MARY HALL,
 WILLIAM HALL,
 GERTRUDE HALL,
 WINNIFRED HALL,
 THOMAS HALL, [SEAL.]
 BERNARD J. MARTIN,
 EDWARD F. MARTIN,
 THOMAS C. MARTIN,
 LEO R. MARTIN,
 J. VINCENT MARTIN,
 MICHAEL H. MARTIN, [SEAL.]
 RACHEL I. MARTIN,
 MARY A. STANDART,
 ANNE F. MARTIN AND
 JULIA F. MARTIN,
 GEO. F. BEATTY, *Solicitor*,
 JOSEPH MARTIN AND
 ANNA MARTIN,

Now Known as Sister Mary Jerome,
 BURCH, LITOWICH AND ROYCE,

Solicitors,

J. P. BEEMS,
 WILLIAM SULLIVAN.

The above Bond is good.

GEO. F. BEATTY, *Solicitor.*
BURCH, LITOWICH AND ROYCE.

Approved.

JOHN C. POLLOCK, *Judge.*

Filed in the District Court on September 17, 1918.

59 UNITED STATES OF AMERICA,
District of Kansas, ss:

I, F. L. Campbell, Clerk of the District Court of the United States of America for the District of Kansas, do hereby certify the within and foregoing to be true, full and correct copies of the *the* record and proceedings in said court in case No. 190-N, entitled Bartholomew Sullivan et al., vs. John Martin et al.

I further certify the Original Citation is attached hereto and returned herewith.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Topeka, in said District of Kansas, this 8th day of January, 1919.

[Seal of District Court U. S., District of Kansas, 1861.]

F. L. CAMPBELL, *Clerk.*

Endorsed on cover: File No. 26888. Kansas D. C. U. S. Term No. 802. Bartholomew Sullivan, Margaret Tholen, John Martin, et al., appellants, vs. Jane Kidd. Filed January 13th, 1919. File No. 26888.


(26,888)

APR 17 1920

JAMES D. MAHER,
Clerk.

In the SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1918

No.  65

**BARTHOLOMEW SULLIVAN, MARGARET
THOLEN, JOHN MARTIN, ET AL.,**

Appellants,

vs.

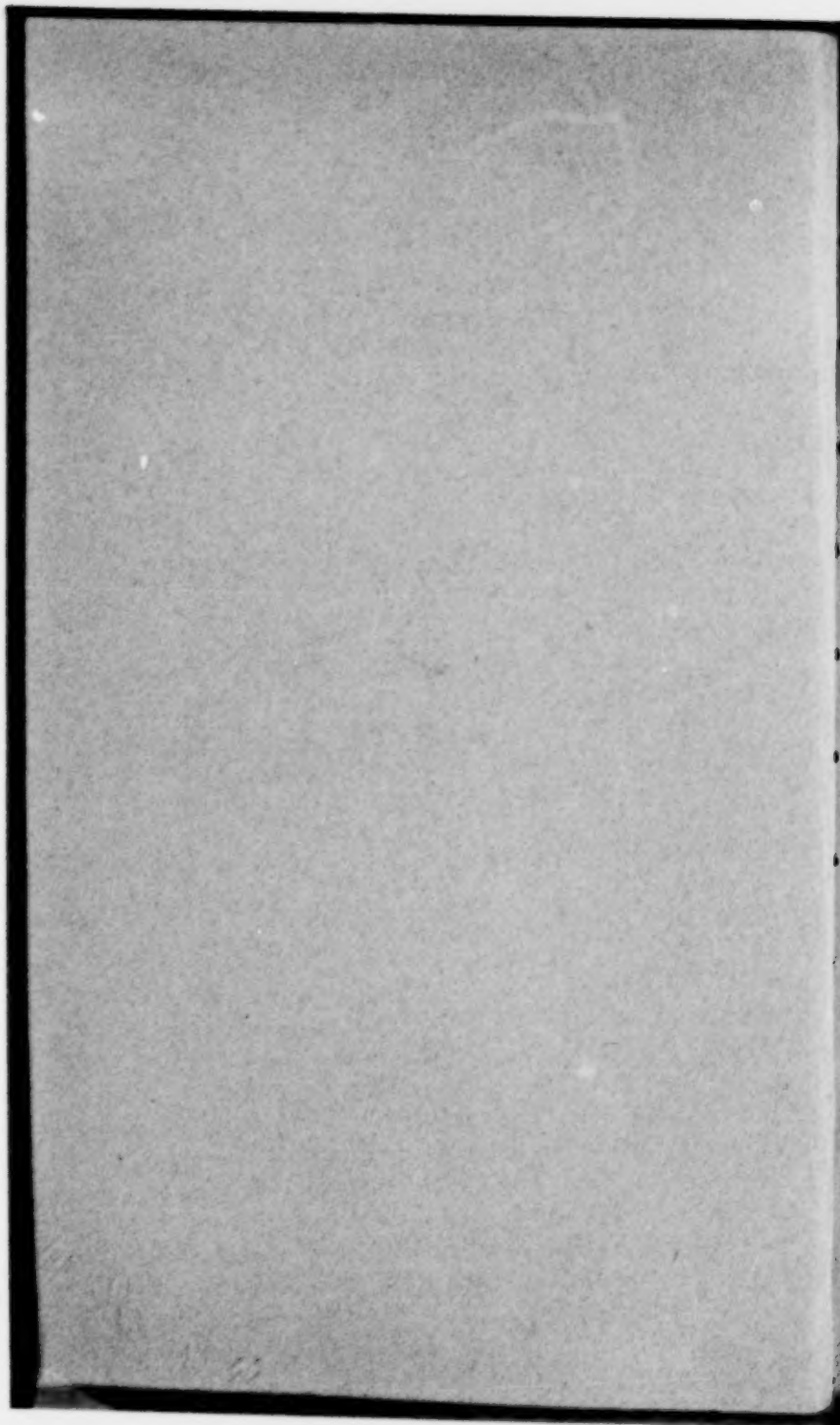
JANE KIDD.

**APPEALED FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF KANSAS.**

FILED JANUARY 13, 1919

Statement, Brief and Argument for Plaintiffs in Error.

**B. I. LITOWICH, Salina, Kansas,
Solicitor for Plaintiff in Error.
C. W. BURCH, Salina, Kansas,
LA RUE ROYCE, Salina, Kansas,
GEO. F. BEATTY, Salina, Kansas,
Of Counsel.**



(26,888)

In the SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1918

No. 802

BARTHOLOMEW SULLIVAN, MARGARET
THOLEN, JOHN MARTIN, ET AL.,
Appellants,

vs.

JANE KIDD.

APPEALED FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF KANSAS.

Statement, Brief and Argument for Plaintiffs in Error.

Statement.

This is an action brought in the District Court of the United States for the District of Kansas for the partition of certain real estate situate in Saline County, Kansas, which was the property of one Peter Martin, formerly of Saline County, Kansas. All of the parties to the action, the complainants and defendants being brothers and sisters, nephews and nieces of Peter Martin, the said Peter Martin being, at the time of his death, a widower who died intestate, unmarried and without issue. (Tr. 2-3). The bill of complaint (Tr. 2-5) contains a statement of all the facts.

Jane Kidd, defendant in error, a non-resident alien of the United States and State of Kansas, was named as the sole devisee and legatee of Margaret Ingoldsby, who, at the time of her death, upon July 28, 1916, and at the time of the death of the said Peter Martin, was a citizen and resident of the Township of Sheffield, County of Lennox-Addington, Province of Ontario, Dominion of Canada. She was a sister of Peter Martin. The bill of complaint was filed in the District Court on March 12, 1917, (Tr. 5). Upon April 23, 1917, Jane Kidd, by H. C. Tobey, her solicitor, entered her appearance and waived the service of a subpoena. Upon July 25, 1917, the complainants filed an amended bill of complaint, which appears in the transcript at pages 8, 9, 10, and 11. Upon July 27, 1917, an order was made for service upon Jane Kidd, which order provided that the said Jane Kidd should, within twenty days from the date of service, appear, answer, demurr, or otherwise plead to said bill. Upon August 13, 1917, the return of the service of the order was filed (Tr. 13), showing personal service upon the defendant, Jane Kidd, of a certified copy of the order and a certified copy of the amended bill of complaint, by delivering the same to her personally at her home in the Township of Sheffield, County of Lennox-Addington, Province of Ontario, Dominion of Canada.

Jane Kidd entered her appearance as above set forth, and after being served with a copy of the amended bill of complaint did not answer, demurr, or otherwise plead to said bill and made default. The entry of appearance was dated April 21, 1917, and filed April 23, 1917. The service of a certified copy of the order of service and a certified copy of the amended bill of complaint was made upon August 6, 1917. Upon November 22, 1917, an application for order taking bill as confessed was filed (Tr. 19). Upon March 11, 1918, at Wichita, Kansas, and at the March term of said court, (Tr. 20-23) a decree was entered, in which decree the court found that the said Jane Kidd had failed to answer or otherwise plead to the

amended bill; that upon November 22, 1917, an order taking said bill as confessed was entered in the order book; that more than thirty days had elapsed since the entry of the order taking said amended bill as confessed; that no proceedings had been taken or had by Jane Kidd since said order taking said amended bill as confessed, and that said Jane Kidd was in default; the court then made a finding as to the interest of each of the parties in the property and further found and decreed that the defendant, Jane Kidd, was without any right, title, estate, or interest in, to, or upon said real estate or any part thereof. The fact that the decree was made at Wichita is shown in the application for order of distribution (Tr. 30).

It was further ordered that the special master in chancery sell said real estate. The real estate was sold, the report of the special master in chancery being in the transcript at pages 25 and 26, the same having been filed upon April 22, 1918.

Upon June 18, 1918, solicitors for Jane Kidd filed a petition for rehearing. (Tr. 32-33). Application for leave to file intervening petition was filed upon June 19, 1918, and upon the same day at Kansas City, Kansas, and at another term, the court made an order granting leave to file intervening petition and an order on intervening petition of Jane Kidd (Tr. 34-35), in which last order the court found that under the laws and treaties in force at the times above mentioned and during the pendency of the action, Margaret Ingoldsby was entitled to inherit from Peter Martin a one-seventh interest in and to said real estate; that the said Jane Kidd, as the sole legatee and devisee of the said Margaret Ingoldsby was entitled to receive the share of the net proceeds of the sale of said real estate which the said Margaret Ingoldsby would have received if living; and the court further ordered that the special master be ordered and directed to pay to Warner, Dean, McLeod and Langworthy, solicitors for Jane Kidd, one-seventh of the proceeds of the sale of said

real estate then remaining in his hands. (Tr. 34-35). All of the parties to the action, with the exception of Jane Kidd, petitioned for appeal (Tr. 37-38) and make the assignments of error which appear in the transcript at pages 36 and 37.

It is the contention of the plaintiffs in error that the court erred in granting the application of the defendant, Jane Kidd, to file her intervening petition for the following reasons:

First, she was more than one year in default after the entry of her appearance by her solicitor, and had been in default from August 1917, until the 19th day of June, 1918, after the service of the order for service with the certified copy of the amended bill of complaint upon her, and that the decree was set aside at a time subsequent to the term at which it was made.

Second, in no event, under the provision of the existing treaties with the United States of America and the Kingdom of Great Britain, was the defendant Jane Kidd entitled to the proceeds of the sale of the real estate set forth in the amended bill of the plaintiff; and that the construction of the court placed upon the treaties is erroneous.

Argument.

The defendant, Jane Kidd, entered her appearance by her solicitor in this case in the District Court in April 1917. After the entry of her appearance by her solicitor she did not file any answer, demurrer, or otherwise plead to the bill of the complainants. Neither the application to file an intervening petition or the intervening petition deny the authority or the right of her solicitors to enter her appearance. The presumption is that he had the authority.

There is nothing in the record to rebut that presumption. If he had that authority she is then bound by his actions, is in default and bound by the decree. Later, in August 1917, she was served personally with a copy of the order for service and a certified copy of the amended bill of complaint. The service was made in the manner directed and ordered by the Judge. The same provided that she should appear, answer, demurr, or otherwise plead to said bill within twenty days. She did not do so. Her time was up according to said order upon August 26, 1917. Not until November 22, 1917, was an application for order taking bill as confessed filed and an order taking said bill as confessed was entered in the order book; and over thirty days intervened before the decree was entered. In fact the decree was not entered barring the said Jane Kidd until March 11, 1918, or more than four months after the order was entered in the order book. She defaulted in every particular.

The application for leave to file the intervening petition was not filed until June 1918, at Kansas City, Kansas. The order granting leave to file intervening petition was made on the 19th of June, 1918. The decree adjudicating that Jane Kidd had no interest in the premises was made and filed upon March 11, 1917, at Wichita during the March term. Consequently, the Court did not have authority to grant leave to file the intervening petition.

"The court below cannot grant a rehearing of an equity case after the term in which the final decree was entered."

Bank of Lewisburg v. Sheffey, 144 U. S. 445,
35 L. ED., 493.

The defendant, Jane Kidd, does not make this application. It is made on her behalf by the British Consul. It is unwarranted under the facts in this case. The appearance of a consul of a foreign country on behalf of an

alien is authorized in the event the alien has not been notified or cannot be notified; then it is proper to notify the consul so that he may appear and protect any rights the subject of his country may have; the appearance of the consul is unwarranted.

The intervening petition recites as an excuse for failure of Jane Kidd to plead or appear that she was ill but that does not supply any excuse why her solicitor failed to appear after he entered her appearance; we also call attention to the fact that the application is unverified, which we think is not within the rules.

Rights of a Canadian to Inherit Land in Kansas.

The defendant in error in this case is an alien. Any rights of inheritance which she may have come to her by virtue of being a legatee and devisee of a sister of the deceased. The sister was an alien who died subsequent to Peter Martin, the owner of the property. Jane Kidd is a citizen of Canada and the party through whom she inherits was a citizen and a resident of Canada in her lifetime. Under the common law, an alien cannot inherit. In the absence of the treaty, the right of inheritance is governed by statute.

Blythe v. Kinckley, 180 U. S. 333, 45 L. Ed., 557;
Jones v. Jones, 234 U. S. 615, 58 L. Ed., 1500.

Kansas has not a statute which permits an alien to inherit. The manner in which the land of Peter Martin descends depends upon the statute of descents and distributions of the State of Kansas, and that statute is applicable only to those who are entitled to take under the existing laws of Kansas. The law of Kansas is applicable in this case. Jane Kidd, a citizen of Canada, is claiming through the right of inheritance, from another citizen of Canada, and under this state of facts, even though Jane Kidd were a resident of Kansas, she could not take an in-

terest in this property because she is the legatee of an alien.

"In the absence of a governing treaty the repeal of the constitutional provision that no distinction shall be made between citizens and aliens in the inheritance, enjoyment, and descent of property and the adoption in its place of the provision that the rights of aliens in reference to the inheritance, enjoyment and descent of property shall be regulated by law without enacting a statute regulating the inheritance of property by aliens revives and reinstates the common-law rule that an alien cannot inherit from a deceased citizen." * * * * *

"The intestate, who was the owner of land in Kansas, died without wife or issue, his father and mother having previously died. Among his surviving brothers and sisters some were aliens and some citizens of the United States. One of his sisters who was an alien and alive when he died had two children who were citizens of the United States. Held, that the sister, being an alien, could not inherit a share of the estate, and that after her death her children, although citizens, were incapable of inheriting through her."

Johnson v. Olsom, 92 Kansas 819.

This decision determines the law of this case.

Absence of Treaty.

We think there is no treaty existing between Great Britain and this country which entitles a citizen of Canada to inherit land in Kansas. The Jay treaty with Great Britain, of the year 1794, does not help the defendant in error, Jane Kidd, in this case. Article 9 is the only provision of that treaty which refers to the rights of aliens with reference to land and is as follows:

"It is agreed that British subjects who now hold lands in the territories of the United States, and American citizens who now hold lands in the dominions of His Majesty, shall continue to hold according to the nature and tenure of their respective estates and titles therein;

and may grant, sell, or devise the same to whom they please, in like manner as if they were natives; and that neither they nor their heirs or assigns shall, so far as may respect the said lands and the legal remedies incident thereto, be regarded as aliens."

An examination of the same shows clearly that it refers and is applicable to British subjects who can show that the title to the land for which they contend was in them or their ancestors when that treaty was made. There is no such contention here. Consequently, this treaty is not applicable. From 1794 or from the consummation or ratification of the Jay treaty until 1899, none of the treaties of the United States with Great Britain contain any stipulation relative to the tenure of real estate.

It is contended that the treaty between the United States and Great Britain, signed March 2, 1899, is applicable. That treaty is not applicable in this case for the reason that Jane Kidd is a citizen of Canada and the party from whom she inherits was in her lifetime a citizen of Canada, which is a colony of Great Britain. Article I of this treaty makes provision for the disposition of real estate upon the death of any person holding such property. Article II provided for the disposal of personal property by testament, donation or otherwise. Article IV of the treaty has the following provision:

"The stipulations of the present convention shall not be applicable to any of the colonies or foreign possessions of her Britannic Majesty unless notice to that effect shall have been given on her behalf of any such colony or foreign possession by her Britannic Majesty's representative at Washington to the United States Secretary of State within one year from the date of the exchange of the ratifications of the present convention."

The authority we have before us advises that no notice to the effect that the Dominion of Canada would take advantage of the stipulations of that convention was filed

with the Department of State in the time and manner provided by the treaty. Consequently, no citizen of Canada can take advantage of that treaty or come within its provisions. It was argued in the court below that Article V gives the defendant in error in this case the right to enjoy those rights which may be accorded to the citizens or subjects of the most favored nation. We think that Article V cannot apply to the facts of this case until the Dominion of Canada as a colony of Great Britain has come within the provisions of this treaty, and inasmuch as it failed to cause notice to be given to the Department of State within one year from the date of the exchange of the ratifications of that convention, the most favored nation clause is not applicable. Counsel in the court below cited some case wherein the courts have held that subjects of Great Britain were entitled to inherit under this treaty. We think that an examination of each of these authorities will disclose that in those cases the aliens were residents of England proper or of a colony which had served the notice upon the United States Secretary of State in the manner provided by the treaty.

For the reasons suggested the judgment of the lower court should be reversed.

Respectfully submitted,

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